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No. 91-1577

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In the Supreme Court of the United States

OCTOBER TERM, 1991

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,
PETITIONERS

v.

LYNN MARTIN, SECRETARY OF LABOR

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in ordering the district court to award back wages due to non-testifying employees under the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, based on the testimony of representative employees.

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 5-10) is reported at 952 F.2d 1050. The district court's January 9, 1991 order (Pet. App. 1) and April 2, 1991 order and amended judgment (Pet. App. 2-3) are unreported.

JURISDICTION

The judgment of the court of appeals was filed on January 3, 1992. The petition for a writ of certiorari was filed on April 1, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner Tony and Susan Alamo Foundation is a nonprofit religious organization incorporated under the laws of California. *Tony & Susan Alamo Found.* v. *Secretary of Labor*, 471 U.S. 290, 292 (1985).[1] Petitioner Tony Alamo, who is President of the Foundation, actively supervises its operations.[2] During the time period relevant to this case, the Foundation operated numerous commercial ventures, including service stations, retail clothing and grocery outlets, hog farms, roofing and electrical construction companies, a motel, and a candy manufacturing and distribution company. 471 U.S. at 292. These businesses were staffed primarily by the Foundation's approximately 300 "associates," who received no cash salaries but were provided with food, shelter and other necessities by the Foundation. The Foundation failed to maintain any "records of the hours worked by associates in its commercial businesses." *Donovan* v. *Tony & Susan Alamo Found.*, 567 F. Supp. 556, 562 (W.D. Ark. 1982).

2. The Secretary of Labor brought this action under Section 17 of the FLSA, 29 U.S.C. 217, to enjoin petitioners from violating the Act's minimum wage, overtime and record-keeping requirements and to collect back wages owed to the Foundation's employees.

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[1] The Eighth Circuit's most recent decision, which is reproduced in the appendix to petitioners' brief (Pet. App. 5-10), contains only an abbreviated discussion of the facts. Therefore, we refer to earlier decisions in this case, including unpublished district court decisions attached as an appendix to this brief and a decision of this Court.

[2] Susan Alamo and Larry LaRouche are no longer parties to this litigation. *Brock* v. *Tony & Susan Alamo Found.*, 842 F.2d 1018, 1019 n.1 (8th Cir. 1988).

Pet. App. 5-6. On December 13, 1982, following a bench trial, the district court issued a memorandum and order holding that petitioners had violated the Act's minimum wage, overtime, and recordkeeping provisions. 567 F. Supp. 556. The court ordered injunctive relief and awarded back wages to most of the testifying "outside workers" who were not associates of the Foundation,[3] but did not award back wages to any of the associates. *Id.* at 576. Instead, the court ordered the Secretary to mail a notice of the decision to all associates advising them to submit an affidavit if they wished to claim back wages. *Ibid.* Based on these affidavits, the Secretary was then to submit to the court a proposed finding of back wages due each associate, less the reasonable cost, as determined by the court, of each associate's board, lodging, and other benefits. *Id.* at 576-577.[4]

3. On appeal, the Eighth Circuit affirmed the district court as to liability, but reversed and remanded

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[3] The court of appeals affirmed the district court's determination that the associates who worked in the Foundation's commercial enterprises and the 18 "outside workers" were "employees" as defined by the FLSA. See *Donovan* v. *Tony and Susan Alamo Found.*, 722 F.2d 397, 404-405 (8th Cir. 1983); *Brock* v. *Tony and Susan Alamo Found.*, 842 F.2d at 1019.

[4] Sections 6 and 7 of the FLSA, 29 U.S.C. 206, 207, require that an employer pay employees covered by the Act a minimum hourly wage and overtime compensation for hours worked in excess of 40 per week. Under Section 3(m) of the Act, 29 U.S.C. 203(m), an employer may count as wages paid the "reasonable cost" of providing an employee with board, lodging, or other facilities, if such items are "customarily furnished" by the employer to his employees. See 29 C.F.R. 531.28. For each year at issue, the court calculated the amount of Section 3(m) benefits to be set off against back wages due each associate. 567 F. Supp. at 566-570.

as to the award of back wages. 722 F.2d 397 (1983). Citing this Court's decision in *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the court of appeals held that the district court had improperly placed on the employees the burden of initiating proceedings to obtain payment of back wages. 722 F.2d at 404. The court remanded for a "determination of the amounts of wages owing, such determination to be based either upon the present record or as supplemented by such additional evidence as the District Court may afford the parties an opportunity to offer." 722 F.2d at 405.[5]

4. The district court entered a judgment on remand on November 26, 1986, App., *infra*, 20a-27a. It ordered the payment of back wages to most of the testifying associates, less Section 3(m) deductions in the amounts the court had previously determined.[6] The court concluded that these associates were entitled to compensation for at least 40 hours of work per week from January 1, 1976, until the injunction was entered in the case. App., *infra*, 23a-31a. The district court then dismissed without prejudice the Secretary's claims on behalf of the approximately 300 associates who did not testify. *Id.* at 22a.

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[5] On the Foundation's petition challenging the application of the Act to a religious institution on statutory and constitutional grounds, this Court granted certiorari and affirmed the holdings of the lower courts on these issues. 471 U.S. 290 (1985).

[6] The 1986 judgment incorporated a memorandum and order entered by the district court on September 11, 1984, App., *infra*, 12a-19a. The court awarded back wages to seven associates deposed by the Secretary, and to three associates who offered live testimony at trial. *Id.* at 23a. It failed to rule on back wages for two other associates who had been deposed, and for one remaining "outside worker."

5. Following a second appeal, the Eighth Circuit affirmed the district court's award of back wages, but again remanded for the district court to "estimate and fashion a reasonable remedy that restores as fully as possible all the employees covered by the FLSA who were improperly denied compensation, regardless of the lack of records." *Brock* v. *Tony & Susan Alamo Found.*, 842 F.2d 1018, 1019 (8th Cir. 1988).[7]

6. During further proceedings directed at establishing the amounts owed the non-testifying associates, the district court "ordered the Secretary to submit a proposed judgment 'reflecting an award for each [employee] identified by the [Foundation] and acknowledged as having worked in the [Foundation's] commercial businesses' based on the backpay awarded earlier to the testifying employees." Pet. App. 6-7, quoting App., *infra*, 3a. The Foundation objected to the Secretary's proposed judgment, contending that the amount of back wages should be based on the Foundation's own recently compiled estimates of the number of hours the employees had worked, and that the amounts proposed by the Secretary had not been offset by the Section 3(m) non-salary benefits. Pet. App. 7. The district court then ordered the Secretary to revise her proposed judgment in light of these objections. Pet. App. 7; App., *infra*, 1a-2a. Because

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[7] The court of appeals also ordered the lower court to make a specific finding as to the amount of wages due to one remaining "outside worker" and to two associates whose depositions the court had overlooked. 842 F.2d at 1020. On April 25, 1989, the district court entered a partial judgment awarding back wages and prejudgment interest to the "outside worker" and to the two associates based on the determination that the associates had worked 60 hours per week during the years in question. App., *infra*, 5a-11a. The Eighth Circuit affirmed that award. 915 F.2d 349 (1990).

the court found that, according to the Foundation's calculations, "no additional amounts [were] due," the court dismissed the claims with prejudice. Pet. App. 1.

7. Upon the Secretary's appeal, the Eighth Circuit again reversed, agreeing with the Secretary that "the district court failed to carry out [the] court's mandate by ordering the Secretary to base its proposed judgment on the Foundation's unsubstantiated approximations of the non-testifying employees' hours, rather than the Secretary's 'pattern or practice' evidence based on the hours the testifying employees worked." Pet. App. 7-8. The court noted that, throughout the lengthy course of the litigation, the Foundation had insisted that it had no record of the hours the associates worked. Nevertheless, in "a last-ditch attempt to subvert [the] court's earlier opinion," it had "belated[ly]" come forward with names of employees and a list of the hours that they had purportedly worked. *Id.* at 8. The court noted that its previous opinion reflected the district court's findings "that the Foundation maintained no employee work records and the Foundation's 'reconstructed' records were inaccurate." *Ibid.* It concluded that the Foundation was foreclosed "from attacking the Secretary's 'pattern or practice' evidence on remand with self-serving, unsubstantiated approximations of the hours its employees worked," *ibid.*, and that the district court erred in relying on the Foundation's submission.

The court rejected the Foundation's criticism of the Secretary's proposed method of calculating back wages. The court noted that, when an employer fails to keep records it is required to maintain under the FLSA, this Court has declared that the amount of damages awarded should be "based on the 'just and

reasonable inference' from the evidence presented." *Mt. Clemens Pottery*, 328 U.S. at 687. The court stated that "[w]e contemplated the district court awarding backpay to the nontestifying employees based on the fairly representative testimony of the testifying employees." Pet. App. 9. The court concluded that "the district court committed error in rejecting the Secretary's proposed judgment" based on representative employee testimony. *Ibid.* Finally, the court ruled that the Secretary's proposed judgment properly credited the Foundation for the meals and lodging that it had provided its employees. *Id.* at 9-10.

ARGUMENT

The court of appeals' decision involves the application of well-established principles to the specific facts of this case, and it does not conflict with any decision of this Court or of any other court of appeals. Accordingly, further review is unwarranted.

1. The FLSA requires that covered employers pay their employees a statutorily prescribed minimum wage for all hours worked and a premium for hours worked in excess of 40 hours per week. 29 U.S.C. 206, 207. Additionally, the statute requires covered employers to maintain and provide to the Wage-Hour Administrator records concerning all employees and their wages, hours, and other conditions and practices of employment. 29 U.S.C. 211(c); see also 29 C.F.R. Pt. 516.

As this Court has recognized, if an employer keeps inadequate or inaccurate records, it is often impossible for an employee to prove the exact amount of back wages to which he is entitled. *Mt. Clemens Pottery Co.*, 328 U.S. at 687. Because the statutory duty of record-keeping lies with the employer, however, it

would defeat the Act's remedial purposes to require each worker to "prove the precise extent of uncompensated work" in order to receive wages due under the Act. Rather, the employee (or the Secretary of Labor on the employee's behalf [8]) "has carried out his burden if he proves that [the employee] has in fact performed work for which he was improperly compensated" and produces "sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." *Ibid.* Once the employee or the Secretary has established the prima facie case in such a manner, "[t]he burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence." *Id.* at 687-688.

In implementing *Mt. Clemens Pottery*, courts have not required all allegedly undercompensated employees to testify in order to establish entitlement to back wages. Rather, in the absence of adequate record-keeping, courts "have frequently granted back wages under the FLSA to non-testifying employees based upon the representative testimony of a small percentage of the employees. * * * The requirement is only that the testimony be fairly representational." *Donovan* v. *Bel-Loc Diner, Inc.*, 780 F.2d 1113, 1116 (4th Cir. 1985) (citation omitted); see also *Donovan* v.

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[8] Although *Mt. Clemens* involved a suit brought directly by employees under Section 16(b) of the FLSA, petitioners do not deny that the Mt. Clemens standard applies to an action by the Secretary of Labor under Section 17 of the Act. Lower federal courts have uniformly applied *Mt. Clemens* in suits by the Secretary under the FLSA. See, *e.g.*, *McLaughlin* v. *Ho Fat Seto*, 850 F.2d 586, 589 (9th Cir. 1988), cert. denied, 488 U.S. 1040 (1989); *Donovan* v. *Bel-Loc Diner, Inc.*, 780 F.2d 1113, 1116 (4th Cir. 1985).

New Floridian Hotel, Inc., 676 F.2d 468, 472 (11th Cir. 1982) ("[I]t is clear that each employee need not testify in order to make out a prima facie case of the number of hours worked as a matter of 'just and reasonable inference.'"); accord *McLaughlin* v. *Ho Fat Seto*, 850 F.2d 586, 589 (9th Cir. 1988), cert. denied, 488 U.S. 1040 (1989); *Donovan* v. *Simmons Petroleum Corp.*, 725 F.2d 83, 86 (10th Cir. 1983); *Donovan* v. *Burger King Corp.*, 672 F.2d 221, 224, 225 (1st Cir. 1982); *Brennan* v. *General Motors Acceptance Corp. (GMAC)*, 482 F.2d 825, 829 (5th Cir. 1973). The use of representative testimony is fully in keeping with *Mt. Clemens Pottery*: As the Court pointed out, barring recovery in the absence of precise proof of the exact amount of under-compensation would "place a premium on an employer's failure to keep proper records" and "penalize the employee" by allowing the noncompliant employer "to keep the benefits of the employee's labors." 328 U.S. at 687. Indeed, in *Mt. Clemens Pottery* itself, only eight out of 300 affected employees testified. See *Mt. Clemens Pottery Co.* v. *Anderson*, 149 F.2d 461, 462 (6th Cir. 1945).

Once a pattern or practice of underpayment is established by representative testimony, the burden shifts to the employer to undermine the conclusions drawn from the representative testimony. For example, the employer may rebut the existence or extent of the violations, *Mt. Clemens Pottery*, 328 U.S. at 687-688; *Castillo* v. *Givens*, 704 F.2d 181, 194 (5th Cir.), cert. denied, 464 U.S. 850 (1983), offer proof that individual employees are not included in the pattern or practice, *GMAC*, 482 F.2d at 829, or demonstrate that the testifying employees are not representative of the larger group. See, *e.g.*, Gov't Br. in Opp. at 11-13, *DialAmerica Marketing, Inc.* v. *Martin*, cert. denied, 112 S. Ct. 583 (1991).

2. Petitioners imply that an award of backpay to non-testifying associates would be improper because no proof was presented as to "the number of associates who worked in [the Foundation's] commercial business and the number of hours worked." Pet. 16. However, there is no longer a dispute as to the number of unpaid associates who worked in the Foundation's commercial enterprises in the years in question. Indeed, on August 22, 1990, the district court ordered the Secretary to submit a proposed judgment reflecting an award for "each associate identified by [petitioners] and acknowledged as having worked in the commercial businesses of the [petitioners]." App., *infra*, 3a. In other words, the Foundation itself identified these associates as having worked in its commercial enterprises. The Secretary submitted a proposed judgment requesting an award of back wages for only these associates.

Furthermore, there is no question that the Secretary established that none of the associates received cash compensation for the work performed. Therefore, the only issue before this Court is whether the court of appeals properly determined, as a matter of "just and reasonable inference," the number of hours for which the non-testifying employees were entitled to compensation.

Petitioners contend (Pet. 16-17) that the Secretary presented no evidence as to the number of hours that the non-testifying associates worked, but instead asked the district court to award back wages to these associates "based on assumptions only." Pet. 20 This contention is in error. The court of appeals had previously ordered the district court to calculate a back wages award based on evidence in the record, "supplemented by * * * additional evidence" if necessary. 722 F.2d at 405. The district court subse-

quently concluded, App., *infra*, 23a-31a, that the unrebutted testimony and depositions of 12 associates established that those associates worked 40-84 hours a week in the Foundation's commercial enterprises during the years in question. Based on the "just and reasonable" assumption that the testimony was representative of the work patterns of the non-testifying associates, the Secretary ultimately requested that awards to the non-testifying associates be based on a work week of 40 hours, the minimum number of hours found to have been worked by any testifying associate.

Petitioners do not challenge the well-established principle that *Mt. Clemens Pottery* allows district courts to award back wages under the FLSA to non-testifying employees based upon the fairly representative testimony of a smaller group of employees.[9] Nor do petitioners succeed in undermining the Secretary's premise, which the court of appeals found reasonable,

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[9] See *Ho Fat Seto*, 850 F.2d at 589; see also *Dole* v. *Snell*, 875 F.2d 802, 803 (10th Cir. 1989) (testimony of one representative employee established violations concerning 32 employees); *Castillo*, 704 F.2d at 195 (testimony of 13 representative employees established uncompensated hours for 39 employees); *Burger King Corp.*, 672 F.2d at 224-225 (employees from six locations established a pattern of violation for 44 locations in two states); *New Floridian Hotel*, 676 F.2d at 472 (testimony of 23 employees, together with other supporting evidence, established prima facie case for back pay award to 151 employees); *GMAC*, 482 F.2d at 829 (testimony of 16 out of 26 employees); *McLaughlin* v. *DialAmerica Marketing, Inc.*, 716 F. Supp. 812, 827 (D.N.J. 1989) (testimony of 43 out of 393 employees) aff'd, 935 F.2d 1281 (3d Cir.), cert. denied, 112 S. Ct. 583 (1991); but see *Secretary of Labor* v. *DeSisto*, 929 F.2d 789, 793 (1st Cir. 1991) (testimony of one employee found insufficiently representative to support award to 244 employees).

see Pet. App. 9, that the 12 testifying associates were "fairly representative" of the larger group of associates that worked in the Foundation's commercial enterprises. Under *Mt. Clemens*, however, it is up to petitioners to rebut the reasonableness of the inference that the hours and patterns of work of the testifying associates were typical of the group as a whole. This petitioners have failed to do. Petitioners suggest that, instead of relying on representative testimony, the district court should base its backpay calculation on information provided by the Foundation itself. See Pet. 20-21. However, the court of appeals concluded, based on the district court's own "findings that the Foundation maintained no employee work records and the Foundation's 'reconstructed' records were inaccurate," that petitioners' submission was far less reliable than the Secretary's "pattern or practice" evidence, and could not be used to undermine the Secretary's proposed award. Pet. App. 8; see also *Donovan* v. *Grantham*, 690 F.2d 453, 458 (5th Cir. 1982) (in order to rebut Secretary's calculations of wages owed, employer's "evidence must be as precise as that offered by the Secretary").[10]

In any event, petitioners cannot complain that the use of representative testimony results in only an approximate calculation of the backpay actually due, since any imprecision is directly attributable to petitioner's failure to maintain appropriate records.

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[10] Although petitioners do not challenge the awards previously made by the court to the testifying associates, they suggest that the testimony of three of these associates (Pet. 18-20) indicates that these associates did not work any compensable hours in the Foundation's commercial enterprises. The district court found otherwise, however, concluding that each of these associates worked 40 hours a week during the years in question. App., *infra*, 30a-31a.

"The employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the requirements * * * of the Act." *Mt. Clemens Pottery*, 328 U.S. at 688. See *Brock* v. *Seto*, 790 F.2d 1446, 1448 (9th Cir. 1986) ("*Mt. Clemens Pottery* leaves no doubt that an award of back wages will not be barred for imprecision where it arises from the employer's failure to keep records as required by the FLSA."); *Beliz* v. *W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1330-1331 (5th Cir. 1985) ("Because precise evidence of the hours worked by each individual is not available due to the failure of [the employer] to keep adequate records, the workers may satisfy their burden with admittedly inexact or approximate evidence.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1992

APPENDIX

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil No. 77-2183

ELIZABETH DOLE, Secretary of Labor,
U.S. Department of Labor, PLAINTIFF

v.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,
DEFENDANTS

ORDER

NOW on this ninth day of October, 1990, comes on for consideration the plaintiff's proposed judgment, submitted to the court on September 13, 1990. And the defendants responded with objections and comments by letter dated September 28, 1990.

IT APPEARING to the court that the proposed judgment should be revised in light of the defendants' comments, it is ORDERED that the plaintiff submit a revised proposed judgment as to the associates identified as having worked in the commercial businesses of the defendants, reflecting a wage computation based on the hours listed for each of those associates in the commercial businesses, as specified by the defendants' answers to the plaintiff's interrogatories.

It is further ORDERED that the gross wage amounts are to be offset by the amounts previously found by the court to be allocable to the benefits provided to those associates, that is, $225.03/month for 1976, $174.06/month for 1977, $225.30/month for 1978, $240.60/month for 1979, $269.92/month for 1980, and $306.38/month for 1981.

It is further ORDERED that the plaintiff submit the revised proposed judgment, along with proposed assessments for interest or other appropriate additions to the basic amounts, on or before October 26, 1990, and that the plaintiff provide the defendants with a copy of the revised proposed judgment. It is further ORDERED that the defendants may have until and including November 9, 1990, to comment to the court on the plaintiff's revised proposed judgment. The court notes that the additional two months necessitated by this revision of the judgment could have been avoided if the defendants had included their comments about the specific hours worked for each associate in their original response to the plaintiff's motion for entry of judgment instead of waiting until after the plaintiff had prepared her proposed judgment.

/s/ Morris S. Arnold
HON. MORRIS S. ARNOLD
United States District Judge

[Filed Oct. 9, 1990]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil No. 77-2183

ELIZABETH DOLE, Secretary of Labor,
U.S. Department of Labor, PLAINTIFF

vs.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,
DEFENDANTS

ORDER

NOW on this twentieth day of August, 1990, comes on for consideration the plaintiff's Motion for Entry of Judgment, filed on July 30, 1990, in the above-styled cause. And the defendants filed a response on August 2, 1990.

IT APPEARING to the court that the plaintiff's motion should be granted in part, it is ORDERED that the plaintiff prepare and submit to the court a proposed judgment reflecting an award for each associate identified by the defendants and acknowledged as having worked in the commercial businesses of the defendants (*see* Exhibits A-F to plaintiff's motion), that award being in the amount of $1875.64 for 1976 associates, $2695.28 for 1977 associates, $2808.40 for 1978 associates, $3144.80 for 1979 associates, $3208.96 for 1980 associates, and $822.86 for 1981 associates,

and the full amount of that award being assessed for each associate listed as having worked the full year, and a pro rata amount of that award being assessed for each associate listed as having worked a partial year.

It is further ORDERED that the plaintiff submit the proposed judgment, along with proposed assessments for interest or other appropriate additions to the basic amounts, on or before September 14, 1990, and that the plaintiff provide the defendants with a copy of the proposed judgment. It is further ORDERED that the defendants may have until and including September 28, 1990, to comment to the court on the plaintiff's proposed judgment.

/s/ Morris S. Arnold
HON. MORRIS S. ARNOLD
United States District Judge

[Filed Aug. 22, 1990]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil Action No. 77-2183

ELIZABETH DOLE, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,
DEFENDANTS

PARTIAL JUDGMENT

In accordance with the memorandum opinion and order entered herein on April 25, 1989, it is hereby

ORDERED, ADJUDGED and DECREED that defendants Tony and Susan Alamo Foundation and Tony Alamo and their agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of Sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*, hereinafter referred to as the Act, in any of the following manners:

A. Defendants Tony and Susan Alamo Foundadation and Tony Alamo shall not, contrary to Sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who is engaged in commerce or in the production of goods for commerce,

or who is employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at a rate of less than the minimum hourly rates required by Section 6 of the Act.

B. Defendants Tony and Susan Alamo Foundation and Tony Alamo shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215 (a)(2), employ an employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless the employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he is employed.

C. Defendants Tony and Susan Alamo Foundation and Tony Alamo shall not, contrary to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep and preserve adequate and accurate records of the persons employed by them, and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

It is further ORDERED, ADJUDGED and DECREED that defendants Tony and Susan Alamo Foundation and Tony Alamo be, and they hereby are, enjoined and restrained from withholding payment of minimum wages and overtime compensation in the total amount of $31,802.74 which the Court finds is due under the Act to their employees named in the

Summary of Unpaid Wages attached hereto in the amounts stated thereon, together with prejudgment interest thereon in the amount of $26,867.47 calculated in accordance with 26 U.S.C. § 6621 from the median dates of withholding to June 1, 1989. It is further

ORDERED, ADJUDGED and DECREED that, in order to comply with the foregoing provisions of this judgment, defendants Tony and Susan Alamo Foundation and Tony Alamo shall deliver to plaintiff, within ten (10) days from the date of entry of this judgment, a cashier's check payable to "Employment Standards Administration, United States Department of Labor" in the amount of $58,670.21. It is further

ORDERED, ADJUDGED and DECREED that, as soon as practicable after this receipt of the aforesaid cashier's check, plaintiff shall distribute the proceeds thereof to the employees named on the Summary of Unpaid Wages attached hereto in the amounts stated thereon less social security and income tax deductions. Any net sums which have not been distributed within 3 years after plaintiff's receipt of the aforesaid cashier's check because of plaintiff's inability to locate the proper persons or because of a refusal to accept such sums, shall be deposited with the Clerk of the Court who forthwith shall deposit such sums with the Treasurer of the United States pursuant to 28 U.S.C. § 2041. It is further

ORDERED, ADJUDGED and DECREED that all demands for relief and claims asserted by plaintiff on behalf of the present and former employees, also known as associates, of the Tony and Susan Alamo Foundation that were not granted in the court's order

filed on November 26, 1986, or in this order are still considered to be pending before the court.

SIGNED this 30th day of May, 1989.

/s/ Morris S. Arnold
HON. MORRIS S. ARNOLD
United States District Judge

[Filed May 30, 1989]

SUMMARY OF UNPAID WAGES

Name	Amount	Median Date of Withholding	Rate of Interest	Number of Years to 06/01/89	Prejudgment Interest	Total
Donald Wylie	$14,545.42	Sat. 3/19/77	7%	12.255	$12,477.79	$27,023.21
Kathy Wylie	14,545.42	Sat. 3/19/77	7%	12.255	12,477.79	27,023.21
A.Z. Hudson	2,711.90	Sat. 9/01/79	6%	11.750	1,911.89	4,623.79
	$31,802.74				$26,867.47	$58,670.21

COMPUTATION OF COMPENSATION DUE TO DONALD WYLIE AND KATHY WYLIE

Year	Compensation Required	Weekly Hours Worked	Weeks Per Year	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1976	$2.20(mw)	60	52	$ 6,864.00	$2,700.36[1]	$ 5,307.64
	1.10(ot)	20	52	1,144.00		
				$ 8,008.00		
1977	2.30(mw)	60	52	7,176.00	2,088.72[2]	6,283.28
	1.15(ot)	20	52	1,196.00		
				$ 8,372.00		
1978	2.65(mw)	60	22	3,498.00	1,126.50[3]	2,954.50
	1.325(ot)	20	22	583.00		
				$ 4,081.00		
		TOTAL		$20,461.00	$5,915.58	$14,545.42

[1] $225.03 per month x 12 months = $2,700.36

[2] $174.06 per month x 12 months = $2,088.72

[3] $225.30 per month x 5 months = $1,126.50

COMPUTATION OF OVERTIME COMPENSATION DUE TO A.Z. HUDSON

May 1979	
1 week x 10 hours per week x $3.335 per hour	$ 33.35
1 week x 20 hours per week x $3.335 per hour	66.70
June 1979	
2 weeks x 20 hours per week x $4.585 per hour	183.40
1 week x 20 hours per week x $5.000 per hour	100.00
June 29 through December 1979	
65 weeks x 60 hours per week x $5.415 per hour	2,111.85
4 weeks x 10 hours per week x $5.415 per hour	216.60
TOTAL	$2,711.90

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

No. CIV 77-2183

RAYMOND J. DONOVAN, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

vs.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,
DEFENDANTS

MEMORANDUM AND ORDER

This case is now seven years old. It is presently on remand because the Court of Appeals concluded the remedy portion of the decision was in error. See, *Donovan v. Tony and Susan Alamo Foundation*, 722 F.2d 397 (8th Cir. 1983).

Specifically, the Court of Appeals said:

> "—we conclude that the District Court's proposed procedure requiring 'associates' to initiate proceedings to obtain payment of amounts due them does not comport with the policy of the statute. It would place on the employee a burden properly falling upon the employer." *Id.* at 403.

The Secretary has not asked for the opportunity to submit additional evidence which is, of course, consistent with the position taken at the several hearings conducted before the original decision was made. The Secretary has consistently argued that this court should assume that all "associates" of the Foundation

are also full time employees of the Foundation's commercial enterprises. For example, the Secretary argued that in 1976 there were 316 "associates" of the Foundation, and this court should award an amount which will compensate all 316 for sixty hours work per week. During the course of the hearings, this court repeatedly told the Secretary's attorneys that there was no evidentiary basis for concluding that all associates were full time employees of the commercial businesses. Specifically, this court concluded:

> First, there is no basis for concluding, as the Secretary suggests, that all 300 of the associates worked in the Foundation's commercial businesses. To the contrary, the evidence reflects that the associates have constructed, decorated and furnished a number of residences, an apartment building, a church, and various other structures used by the Foundation and its associates for non-commercial purposes. The labor for much of this construction and the continuing maintenance of the structures was furnished by the associates. As previously mentioned, some associates work at the Foundation in non-commercial jobs, such as babysitting at the nursery, cooking for the other associates, etc. Furthermore, the Foundation produces a television show which obviously requires some non-commercial work time; some associates "witness" on the street, in hospitals, jails and other places; and some help organize new churches. Additionally, some associates are employees of businesses other than the Foundation's and simply turn their paychecks over to the Foundation. In any event, while it is difficult to reach any reasonably accurate conclusion as to how many associates work

> in the commercial businesses at any particular time, it is not reasonable to conclude that all of the adult associates are working in the commercial businesses, or, that the ones who do work in the commercial businesses do so on the regular basis suggested by the Secretary.

Donovan v. Tony and Susan Alamo Foundation, 567 F.Supp. 556, 563 (W.D. Ark. 1982).

While this court is aware of the decision in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the language of that case does not solve the problem. A threshold burden on the claimant imposed by *Mt. Clemens Pottery Co.* is the requirement that the worker establish his status as an "employee". This threshold requirement is noted by the Court of Appeals in the following language:

> "—we hold that an employee has carried out his burden *if he proves that he has in fact performed work for which he was improperly compensated* and if he produces sufficient evidence to show the amount and extent of the work as a matter of just and reasonable inference." (Emphasis added.) 328 U.S. at 687-88.

The Secretary chose to treat this claim in the manner of a "class action". A few former associates of the Foundation testified that they worked in the Foundation's commercial businesses and they described generally the hours they worked. They also testified that other, generally unidentified, associates worked similar hours. Based upon such testimony, the Secretary argued that *all* associates should be compensated at the rate of 60 hours per week. This court did not accept that argument. Under the evidence, the term "associate" simply cannot be used

interchangeably with the term "employee" under the Act.

For example, William John Baxter, a former "associate", testified that from January 1, 1976, through March, 1977, he worked in various commercial businesses operated by the Foundation at Alma, Arkansas, and Nashville, Tennessee. In March, 1977, he said he "worked on the chapel" at Alma. From October, 1977, through the spring of 1978, he worked for Planters Peanut Company and Ayers Furniture Company in Fort Smith. He was paid by those two employers and "donated" his check to the Foundation. There is nothing in the Act, or cases decided under the Act, which leads this court to believe that Mr. Baxter should be treated as an "employee" of the Foundation for the time he "worked on the chapel" or the time he was employed by Planters Peanut Company and Ayers Furniture Company. If a person wants to donate his paycheck to a religious organization, nothing in the Fair Labor Standards Act suggests that he be treated as an employee of the organization because of that donation.

The remedy procedure devised by this court was not calculated to shift any burden to the employee. Its purpose was simply to identify those associates who worked in commercial businesses and the time periods covered by their work. Such a procedure is routinely used in the remedy phase of class action employment cases under Title VII.

Nevertheless, and since the remedy procedure originally ordered in this case has been disapproved, the court will look to the record in order to identify those "associates" who were employees of the Foundation's commercial businesses and who were not compensated for their work. The following associates are entitled

to such compensation as provided by the Act, less the value of "benefits" received from the Foundation during the period for which compensation is awarded.

(1) *Lucien Claude*—Mr. Claude was an associate of the Foundation for seven and one-half years. The relevant time period is January 1, 1976, until he left the Foundation on May 23, 1979. He testified by deposition that he worked some jobs and turned his paycheck over to the Foundation. At other times, he worked for Foundation businesses and was not paid. Although the testimony is vague and general, there is no doubt Mr. Claude "performed work for which he was improperly compensated". He is awarded such sums as required by the Act to compensate him for 40 hours per week from January 1, 1976, through May 23, 1979.

(2) *Ralph Malone*—Mr. Malone was an associate of the Foundation during the period from January 1, 1976, until he left on April 1, 1978. Apparently he spent some of his time "cooking for people at the church" and acting as a driver of an "agent" of the Foundation. How such efforts are compensable under the Act was not explained by the Secretary. Nevertheless, the evidence supports an inference that Mr. Malone worked in a number of Foundation businesses beginning in August, 1976, until he left the Foundation. He is awarded such sums as required by the Act to compensate him for 60 hours per week from August 1, 1976, until April 1, 1979.

(3) *Debra Malone*—Mrs. Malone was an "associate" who worked in the sewing room and as a waitress at the Foundation's restaurant. The evidence supports an inference that she worked 60 hours per week from January 1, 1976, through April 1, 1976, and was not properly compensated.

(4) *Lane Louise Petri*—Mrs. Petri worked an average of 44 hours per week from January 1, 1976, through March 7, 1976. She is entitled to compensation as provided by the Act.

(5) *William John Baxter*—Mr. Baxter is entitled to compensation provided under the Act for 60 hours per week during the following time periods:

January 1, 1976, until March 1, 1977
May 1, 1978, until August 16, 1978.

He will not be awarded any compensation for the time he "worked on the chapel" or worked for outside employers and "donated" his paycheck to the Foundation.

(6) *Richard T. Hidell*—Mr. Hidell joined the Foundation in January, 1976. He worked 12 hours a day, six days a week, in various commercial businesses until he left the Foundation in August, 1978, except for one two month period that he worked 12 hours a day, seven days a week. He began as a buyer in California for the Foundation businesses and then moved to Arkansas where he worked for the construction company, the nursery and the roofing company. During the two month period, he worked as a maitre

> d' in the restaurant. He is awarded such sums as required by the Act to compensate him for a period from January 1, 1976, to August 31, 1978, at a rate of 12 hours a day, six days a week, except for eight weeks at 12 hours a day for seven days a week during 1976.

Four other "associates" of the Foundation testified at the hearings in behalf of the Foundation. Although they vehemently denied they were entitled to any compensation for their work in the Foundation's commercial enterprises, the evidence supports an inference that William R. Levy, Ann Elmore, Larry La Roche and Edward Mick performed work for which they were improperly compensated. Ann Elmore, Larry La Roche and Edward Mick are entitled to compensation for 40 hours per week from January 1, 1976, until the order of injunctive relief was entered. William R. Levy is entitled to compensation for 40 hours per week from June 1, 1979, until the order of injunctive relief was entered.

There were, no doubt, other "associates" of the Foundation who performed work for which they were not properly compensated under the Act. This Court does not believe, however, that there is credible evidence upon which to base an inference as to the identity of those associates, the time period which they worked, or the compensation they are due. Absent some reasonable basis in the evidence for such findings, this court is not willing to award the $15,000,000 or so in benefits sought by the Secretary. In any event, this court has made all the factual findings believed possible with this record.

The Secretary is hereby ordered to submit a proposed judgment within 15 days which reflects the

sums due each employee under the Act for the periods covered by the awards, less the value of any "benefits" afforded the employees during the periods for which compensation is due. The "benefits" are to be determined from the schedules of benefits found in the Memorandum Order filed December 13, 1982.

The claims asserted by the Secretary in behalf of associates of the Foundation who are not specifically granted relief as part of this order or previous orders of this court are dismissed without prejudice.

September 10, 1984

/s/ [Illegible]
United States District Judge

[Filed Sep. 11, 1984]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

Civil No. 77-2183

WILLIAM E. BROCK, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

TONY AND SUSAN ALAMO FOUNDATION, ET AL.,
DEFENDANTS

JUDGMENT

In accordance with the memorandum and order entered herein on September 11, 1984, as amended, it is hereby ORDERED, ADJUDGED, AND DECREED that defendants Tony and Susan Alamo Foundation and Tony Alamo and their agents, servants, employees, and all persons in active concert or participation with them be, and they are hereby, permanently enjoined and restrained from violating the minimum wage, overtime, and record-keeping provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 215(a)(2), 215(a)(5), hereinafter referred to as the Act, in any of the foregoing manners:

A. Defendants Tony and Susan Alamo Foundation and Tony Alamo shall not, contrary to 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who is engaged in commerce or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce within the meaning of the Act, wages at a rate less than the minimum hourly rates required by Section 6 of the Act, 29 U.S.C. § 206.

B. Defendants Tony and Susan Alamo Foundation and Tony Alamo shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any employee in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty hours, unless the employee receives compensation for his employment in excess of forty hours at a rate not less than one and one-half times the regular rate at which he is employed.

C. Defendants Tony and Susan Alamo Foundation and Tony Alamo shall not, contrary to 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep, and preserve adequate and accurate records of the persons employed by them, and the wages, hours, and other conditions and practices of employment maintained by them, as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

It is further ORDERED, ADJUDGED, AND DECREED that defendants Tony and Susan Alamo Foundation and Tony Alamo be, and they are hereby, enjoined and restrained from withholding payment of minimum wages and overtime compensation in the total amount of $113,636.94 that the court finds is due under the Act to the employees named in the Summary of Unpaid Wages attached hereto in the amounts stated thereon, together with prejudgment interest thereon in the amount of $69,359.20 calculated in accordance with 26 U.S.C. § 6621 from the median dates of withholding to December 1, 1986.

It is further ORDERED, ADJUDGED, AND DECREED that, in order to comply with the foregoing provisions of this judgment, defendants Tony and Susan Alamo Foundation and Tony Alamo shall de-

liver to plaintiff, within fourteen days from the date of entry of this judgment, a cashier's check payable to "Employment Standards Administration, United States Department of Labor" in the amount of $182,996.14.

It is further ORDERED, ADJUDGED, AND DECREED that as soon as practicable after receipt of the aforesaid cashier's check, plaintiff shall distribute the proceeds thereof to the employees named on the Summary of Unpaid Wages attached hereto in the amounts stated thereon less social security and income tax deductions. Any net sums that have not been distributed within three years after plaintiff's receipt of the aforesaid cashier's check because of plaintiff's inability to locate the proper persons or because of a refusal to accept such sums shall be deposited with the Clerk of this Court, who forthwith shall deposit such sums with the Treasurer of the United States pursuant to 28 U.S.C. § 2041.

It is further ORDERED, ADJUDGED, AND DECREED that all demands for relief and claims asserted by plaintiff on behalf of the present and former employees, also known as associates, of the Tony and Susan Alamo Foundation that are not granted herein be, and are hereby, denied and dismissed without prejudice.

SIGNED this 25th day of November, 1986.

/s/ Morris S. Arnold
HON. MORRIS S. ARNOLD
United States District Judge

[Filed Nov. 26, 1986]

SUMMARY OF UNPAID WAGES

Name	Amount	Median Date of Withholding	Rate of Interest	Number of Years to Dec. 1, 1986	Prejudgment Interest	Total
Lucien Claude	$ 8,625.14	Sat., Sep. 10, 1977	7%	9.225	$ 5,569.68	$ 14,194.00
Debra Malone	13,843.22	Wed., Mar. 2, 1977	7%	9.751	9,448.97	23,292.00
Ralph Malone	10,798.43	Wed., June 15, 1977	7%	9.463	7,152.99	17,951.00
Lane L. Petri	492.70	Sat., Jan. 31, 1976	9%	10.833	480.37	973.00
William J. Baxter	8,143.41	Wed., Apr. 27, 1977	7%	9.597	5,470.66	13,614.00
Richard T. Hydell	22,462.00	Sat., Apr. 30, 1977	7%	9.589	15,077.17	37,539.00
William R. Levy	5,604.22	Wed., Apr. 30, 1980	12%	6.589	4,431.14	10,035.00
Ann Elmore	14,555.94	Wed., Aug. 16, 1978	6%	8.293	7,242.74	21,798.00
Larry LaRoche	14,555.94	Wed., Aug. 16, 1978	6%	8.293	7,242.74	21,798.00
Edward Mick	14,555.94	Wed., Aug. 16, 1978	6%	8.293	7,242.74	21,798.00
TOTAL	$113,636.94				$69,359.20	$182,996.00

COMPUTATION OF COMPENSATION DUE LUCIEN CLAUDE

Year	Compensation Required	Weekly Hours Worked	Yearly Weeks Worked	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1976	$2.20	40	52	$ 4,576.00	$2,700.36[1]	$1,875.64
1977	2.30	40	52	4,784.00	2,088.72[2]	2,695.28
1978	2.65	40	52	5,512.00	2,703.60[3]	2,808.40
1979	2.90	40	20.6	2,389.60	1,143.78[4]	1,245.82
				$17,261.60	$8,636.46	$8,625.14

[1] $225.03 per month x 12 months = $2,700.36

[2] $174.06 per month x 12 months = $2,088.72

[3] $225.30 per month x 12 months = $2,703.60

[4] $240.60 per month x 12 months = $2,887.20

$2,887.20 per year ÷ 52 weeks per year = $55.523 per week
$55.523 per week x 20.6 weeks = $1,143.78

COMPUTATION OF COMPENSATION DUE TO DEBRA MALONE

Year	Compensation Required	Weekly Hours Worked	Yearly Weeks Worked	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1976	$2.20(mw)	60	52	$ 6,864.00	$2,700.36[1]	$ 5,307.00
	1.10(ot)	20	52	1,144.00		
				$ 8,008.00		
1977	$2.30(mw)	60	52	$ 7,176.00	$2,088.72[2]	6,283.00
	1.15(ot)	20	52	1,196.00		
				$ 8,372.00		
1978	$2.65(mw)	60	17	$ 2,703.00	$ 901.20[3]	2,252.00
	1.325(ot)	20	17	450.00		
				$ 3,153.50		
		TOTAL		$19,533.50	$5,690.28	$13,843.00

[1] $225.03 per month x 12 months = $2,700.36

[2] $174.06 per month x 12 months = $2,088.72

[3] $225.30 per month x 4 months = $901.20

COMPUTATION OF COMPENSATION DUE TO LANE LOUIS PETRI

Year	Compensation Required	Weekly Hours Worked	Yearly Weeks Worked	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1976	$2.20(mw)	44	10	$ 968.00	$519.30[1]	$492.70
	1.10(ot)	4	10	44.00		
				$1,012.00		

[1] $225.03 per month x 12 months = $2,700.36
$2,700.36 per year ÷ 52 weeks per year = $51.93 per week
$51.93 per week x 10 weeks — $519.30

COMPUTATION OF COMPENSATION DUE TO RALPH MALONE

Year	Compensation Required	Weekly Hours Worked	Yearly Weeks Worked	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1976	$2.20(mw)	60	22	$ 2,904.00	$1,125.15[1]	$ 2,262.80
	1.10(ot)	20	22	484.00		
				$ 3,388.00		
1977	$2.30(mw)	60	52	$ 7,176.00	$2,088.72[2]	$ 6,283.20
	1.15(ot)	20	52	1,196.00		
				$8,372.00		
1978	$2.65(mw)	60	17	$ 2,703.00	$ 901.20[3]	$ 2,252.30
	1.325(ot)	20	17	450.00		
				$ 3,153.50		
		TOTAL		$14,913.50	$4,115.07	$10,798.40

[1] $225.03 per month x 5 months = $1,125.15

[2] $174.06 per month x 12 months = $2,088.72

[3] $225.30 per month x 4 months = $ 901.20

COMPUTATION OF COMPENSATION DUE TO WILLIAM JOHN BAXTER

Year	Compensation Required	Weekly Hours Worked	Yearly Weeks Worked	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1976	$2.20(mw)	60	52	$ 6,864.00	$2,700.36[1]	$5,307.00
	1.10(ot)	20	52	1,144.00		
				$ 8,008.00		
1977	$2.30(mw)	60	8	$ 1,104.00	321.34[2]	966.00
	1.15(ot)	20	8	184.00		
				$ 1,288.00		
1978	$2.65(mw)	60	14	$ 2,226.00	727.89[3]	1,869.00
	1.325(ot)	20	14	371.00		
				$ 2,597.00		
	TOTAL			$11,893.00	$3,749.59	$8,143.00

[1] $225.03 per month x 12 months = $2,700.36 per year

[2] $174.06 per month x 12 months = $2,088.72 per year
$2,088.72 per year ÷ 52 weeks per year — $40.168 per week
$40.168 per week x 8 weeks = $321.34

[3] $225.30 per month x 12 months = $2,703.60 per year
$2,703.60 per year ÷ 52 weeks per year = $51.992 per week
$51.922 per week x 14 weeks = $727.89

COMPUTATION OF COMPENSATION DUE TO RICHARD T. HYDELL

Year	Compensation Required	Weekly Hours Worked	Yearly Weeks Worked	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1976	$2.20(mw)	84	8	$ 1,478.40	$ 415.44[1]	$ 1,450.00
	1.10(ot)	44	8	387.00		
				$ 1,865.60		
1976	$2.20(mw)	72	44	$ 6,969.60	$2,284.92[2]	$ 6,233.00
	1.10(ot)	32	44	1,548.80		
				$ 8,518.40		
1977	$2.30(mw)	72	52	$8,611.20	$2,088.72[3]	$ 8,436.00
	1.15(ot)	32	52	1,913.60		
				$10,524.80		
1978	$2.65(mw)	72	35	$ 6,678.00	$1,819.72[4]	$ 6,342.00
	1.325(ot)	32	35	1,484.00		
				$ 8,162.00		
		TOTAL		$29,070.80	$6,608.80	$22,462.00

[1] $225.03 per month x 12 months = $2,700.36
$2,700.36 per year ÷ 52 weeks per year = $51.93 per week
$51.93 per week x 8 weeks — $415.44

[2] $225.30 per month x 12 months = $2,700.36 per year
$2,700.36 per year ÷ 12 months per year = $51.93 per week
$51.93 per week x 44 weeks = $2,284.92

[3] $174.06 per month x 12 months per year = $2,088.72

[4] $225.30 per month x 12 months per year = $2,703.60 per year
$2,703.60 per year ÷ 52 weeks per year = $51.992 per week
$51.992 per week x 35 weeks = $1,819.72

COMPUTATION OF COMPENSATION DUE TO WILLIAM R. LEVY

Year	Compensation Required	Weekly Hours Worked	Yearly Weeks Worked	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1979	$2.90	40	26	$ 3,016.00	$1,443.60[1]	$1,572.00
1980	$3.10	40	52	$ 6,448.00	$3,239.04[2]	$3,208.00
1981	$3.35	40	13	$ 1,742.00	$ 919.14[3]	$ 822.00
			TOTAL	$11,206.00	$5,601.78	$5,604.00

[1] $240.60 per month x 12 months per year = $2,887.20 per year
$2,887.20 per year ÷ 52 weeks per year = $55.523 per week
$55.523 per week x 26 weeks = $1,443.60

[2] $269.92 per month x 12 months per year = $3,239.04

[3] $306.38 per month x 3 months per year = $919.14

COMPUTATION OF COMPENSATION DUE TO ANN ELMORE, LARRY LA ROCHE, AND EDWARD MICK

Year	Compensation Required	Weekly Hours Worked	Yearly Weeks Worked	Gross Compensation Due	Cost of Facilities Furnished	Net Compensation Due
1976	$2.20	40	52	$ 4,576.00	$ 2,700.36[1]	$ 1,875.00
1977	$2.30	40	52	$ 4,784.00	$ 2,088.72[2]	$ 2,695.00
1978	$2.65	40	52	$ 5,512.00	$ 2,703.60[3]	$ 2,808.00
1979	$2.90	40	52	$ 6,032.00	$ 2,887.20[4]	$ 3,144.00
1980	$3.10	40	52	$ 6,448.00	$ 3,239.04[5]	$ 3,208.00
1981	$3.35	40	13	$ 1,742.00	$ 919.14[6]	$ 822.00
		TOTAL		$29,094.00	$14,538.06	$14.555.00

[1] $225.03 per month x 12 months per year = $2,700.36

[2] $174.06 per month x 12 months per year = $2,088.72

[3] $225.30 per month x 12 months per year = $2,703.60

[4] $240.60 per month x 12 months per year = $2,887.20

[5] $269.92 per month x 12 months per year = $3,239.04

[6] $306.38 per month x 3 months per year = $ 919.14

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